

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

BURROUGHS DIESEL, INC.

PLAINTIFF

V.

CAUSE NO. 2:18-cv-48-KS-MTP

THE TRAVELERS INDEMNITY
COMPANY OF AMERICA

DEFENDANT

**RESPONSE IN OPPOSITION TO
TIA's MOTION TO EXCLUDE EXPERT TESTIMONY**

COMES NOW the Plaintiff, Burroughs Diesel, Inc. ("BDI"), through counsel, pursuant to the FRCP and FRE, and files its Response in Opposition to The Traveler's Indemnity Company of America's ("TIA") Motion to Exclude Expert Testimony [105] as follows:

1. TIA's Motion is fatally flawed in that its own engineering experts offer substantially similar opinions and employ essentially identical methodology. What TIA mis-characterizes as unreliable is actually the proper subject, if at all, of cross-examination, and ultimately constitute issues of weight and credibility best reserved for the jury at trial. BDI's expert opinions are sufficiently relevant and reliable so as to assist the jury at trial and thus TIA's motion must be denied.

2. In further opposition to TIA's Motion to Exclude, BDI relies upon those factual matters and legal authorities set forth in its accompanying *Memorandum Brief*, as well as its Response and Memorandum Brief in Opposition to TIA's Motion for Summary Judgment. BDI also relies upon the following exhibits attached hereto:

- Exhibit “1” Expert report dated 1/25/17 of TIA’s engineer, Richard Edwards (“Edwards report”);
- Exhibit “2” Majestic Steel publication, Lorenzo dep. ex. “224” (“Majestic Steel”);
- Exhibit “3” Dr. Lorenzo’s acid damage calculations, as amended, Lorenzo dep. ex. “223” and “226” (“calculation”);
- Exhibit “4” Dr. Lorenzo’s Affidavit (“Lorenzo Aff.”);
- Exhibit “5” Deposition of Marc Zupan, taken by BDI (“Zupan dep.”); and
- Exhibit “6” Deposition of Marc Zupan, taken by Baker (“Zupan Baker dep.”).

WHEREFORE, PREMISES CONSIDERED, BDI respectfully requests that this Court deny TIA’s Motion to Exclude Expert Testimony [105] in its entirety and thereby allowing trial testimony from BDI’s engineering experts to assist jurors at trial. BDI prays for such further or additional relief, whether legal or equitable, to which it may be entitled in the premises.

RESPECTFULLY SUBMITTED, this the 19th day of July, 2019.

BURROUGHS DIESEL, INC. — *Plaintiff*

by: /s/ Ken R. Adcock
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CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the foregoing pleading with the Clerk of the Court using the ECF system, which sent notification of the filing to counsel of record, including:

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Counsel for the Travelers Indemnity Company of America

and I hereby certify that I have this day electronically mailed a true and correct copy of the above and foregoing document to the following: none.

SO CERTIFIED, THIS the 19th day of July, 2019.

/s/ *Ken R. Adcock*
Ken R. Adcock (MSB #1150)